

Introduced by Senator Bowen

December 6, 2004

An act to amend Section 1798.24 of the Civil Code, and Section 10850 of the Welfare and Institutions Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 13, as introduced, Bowen. Personal information.

The existing Information Practices Act of 1977 generally prohibits a state agency from disclosing any personal information in a manner that would link the information to the individual to whom it pertains unless the disclosure of the information is, among other things, to a person using the information solely for statistical research or reporting purposes or to the University of California or a nonprofit educational institution conducting scientific research if specified confidentiality requirements are met.

This bill would eliminate the provisions authorizing a state agency to disclose personal information for these research purposes.

Existing law prohibits the disclosure of confidential information regarding applicants and recipients of public assistance benefits, with certain exceptions that include allowing the State Department of Social Services to make case records available for research purposes provided that the research will not result in the disclosure of the identity of applicants for or recipients of public social services.

This bill would allow the department to make these case records available provided that making them available will not result in disclosure of the identity of applicants for or recipients of public social services and will not disclose personal information in a manner that would link the information to the individual to whom it pertains.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1798.24 of the Civil Code is amended to
2 read:
3 1798.24. No agency may disclose any personal information in
4 a manner that would link the information disclosed to the
5 individual to whom it pertains unless the ~~disclosure of the~~
6 information is *discloses, as follows*:
7 (a) To the individual to whom the information pertains.
8 (b) With the prior written voluntary consent of the individual
9 to whom the record pertains, but only if ~~such-that~~ consent has
10 been obtained not more than 30 days before the disclosure, or in
11 the time limit agreed to by the individual in the written consent.
12 (c) To the duly appointed guardian or conservator of the
13 individual or a person representing the individual ~~provided that if~~
14 it can be proven with reasonable certainty through the possession
15 of agency forms, documents or correspondence that ~~such-this~~
16 person is the authorized representative of the individual to whom
17 the information pertains.
18 (d) To those officers, employees, attorneys, agents, or
19 volunteers of the agency ~~which-that~~ has custody of the
20 information if the disclosure is relevant and necessary in the
21 ordinary course of the performance of their official duties and is
22 related to the purpose for which the information was acquired.
23 (e) To a person, or to another agency where the transfer is
24 necessary for the transferee agency to perform its constitutional
25 or statutory duties, and the use is compatible with a purpose for
26 which the information was collected and the use or transfer is
27 accounted for in accordance with Section 1798.25. With respect
28 to information transferred from a law enforcement or regulatory
29 agency, or information transferred to another law enforcement or
30 regulatory agency, a use is compatible if the use of the
31 information requested is needed in an investigation of unlawful
32 activity under the jurisdiction of the requesting agency or for
33 licensing, certification, or regulatory purposes by that agency.
34 (f) To a governmental entity when required by state or federal
35 law.

1 (g) Pursuant to the California Public Records Act, ~~Chapter~~
2 ~~(Chapter 3.5~~ (commencing with Section 6250) of Division 7 of
3 Title 1 of the Government ~~Code~~ Code).

4 ~~(h) To a person who has provided the agency with advance~~
5 ~~adequate written assurance that the information will be used~~
6 ~~solely for statistical research or reporting purposes, but only if~~
7 ~~the information to be disclosed is in a form that will not identify~~
8 ~~any individual.~~

9 ~~(i)~~
10 ~~(h)~~ Pursuant to a determination by the agency ~~which~~ *that*
11 maintains information that compelling circumstances exist ~~which~~
12 *that* affect the health or safety of an individual, if upon the
13 disclosure notification is transmitted to the individual to whom
14 the information pertains at his or her last known address.
15 Disclosure shall not be made if it is in conflict with other state or
16 federal laws.

17 ~~(j)~~
18 ~~(i)~~ To the State Archives ~~of the State of California~~ as a record
19 ~~which~~ *that* has sufficient historical or other value to warrant its
20 continued preservation by the California state government, or for
21 evaluation by the Director of General Services or his or her
22 designee to determine whether the record has further
23 administrative, legal, or fiscal value.

24 ~~(k)~~
25 ~~(j)~~ To any person pursuant to a subpoena, court order, or other
26 compulsory legal process if, before the disclosure, the agency
27 reasonably attempts to notify the individual to whom the record
28 pertains, and if the notification is not prohibited by law.

29 ~~(l)~~
30 ~~(k)~~ To any person pursuant to a search warrant.

31 ~~(m)~~
32 ~~(l)~~ Pursuant to Article 3 (commencing with Section 1800) of
33 Chapter 1 of Division 2 of the Vehicle Code.

34 ~~(n)~~
35 ~~(m)~~ For the sole purpose of verifying and paying government
36 health care service claims made pursuant to Division 9
37 (commencing with Section 10000) of the Welfare and
38 Institutions Code.

39 ~~(o)~~

1 (n) To a law enforcement or regulatory agency when required
2 for an investigation of unlawful activity or for licensing,
3 certification, or regulatory purposes, unless the disclosure is
4 otherwise prohibited by law.

5 ~~(p)~~

6 (o) To another person or governmental organization to the
7 extent necessary to obtain information from the person or
8 governmental organization as necessary for an investigation by
9 the agency of a failure to comply with a specific state law
10 ~~which~~that the agency is responsible for enforcing.

11 ~~(q)~~

12 (p) To an adopted person and is limited to general background
13 information pertaining to the adopted person's natural parents,
14 provided that the information does not include or reveal the
15 identity of the natural parents.

16 ~~(r)~~

17 (q) To a child or a grandchild of an adopted person and
18 disclosure is limited to medically necessary information
19 pertaining to the adopted person's natural parents. However, the
20 information, or the process for obtaining the information, shall
21 not include or reveal the identity of the natural parents. The State
22 Department of Social Services shall adopt regulations governing
23 the release of information pursuant to this subdivision by July 1,
24 1985. The regulations shall require licensed adoption agencies to
25 provide the same services provided by the department as
26 established by this subdivision.

27 ~~(s)~~

28 (r) To a committee of the Legislature or to a Member of the
29 Legislature, or his or her staff when authorized in writing by the
30 member, where the member has permission to obtain the
31 information from the individual to whom it pertains or where the
32 member provides reasonable assurance that he or she is acting on
33 behalf of the individual.

34 ~~(t) To the University of California or a nonprofit educational~~
35 ~~institution conducting scientific research, provided the request~~
36 ~~for information includes assurances of the need for personal~~
37 ~~information, procedures for protecting the confidentiality of the~~
38 ~~information and assurances that the personal identity of the~~
39 ~~subject shall not be further disclosed in individually identifiable~~
40 ~~form.~~

1 ~~(u)~~

2 (s) To an insurer if authorized by Chapter 5 (commencing with
3 Section 10900) of Division 4 of the Vehicle Code.

4 (t) Pursuant to Section 1909, 8009, or 18396 of the Financial
5 Code.

6 This article shall not be construed to require the disclosure of
7 personal information to the individual to whom the information
8 pertains when that information may otherwise be withheld as set
9 forth in Section 1798.40.

10 ~~(v) Pursuant to Section 1909, 8009, or 18396 of the Financial~~
11 ~~Code.~~

12 SEC. 2. Section 10850 of the Welfare and Institutions Code is
13 amended to read:

14 10850. (a) Except as otherwise provided in this section, all
15 applications and records concerning any individual made or kept
16 by any public officer or agency in connection with the
17 administration of any provision of this code relating to any form
18 of public social services for which grants-in-aid are received by
19 this state from the United States government shall be
20 confidential, and shall not be open to examination for any
21 purpose not directly connected with the administration of that
22 program, or any investigation, prosecution, or criminal or civil
23 proceeding conducted in connection with the administration of
24 any such program. The disclosure of any information ~~which~~ *that*
25 identifies by name or address any applicant for or recipient of
26 these grants-in-aid to any committee or legislative body is
27 prohibited, except as provided in subdivision (b).

28 (b) Except as otherwise provided in this section, no person
29 shall publish or disclose or permit or cause to be published or
30 disclosed any list of persons receiving public social services. Any
31 county welfare department in this state may release lists of
32 applicants for, or recipients of, public social services, to any
33 other county welfare department or the State Department of
34 Social Services, and these lists or any other records shall be
35 released when requested by any county welfare department or the
36 State Department of Social Services. These lists or other records
37 shall only be used for purposes directly connected with the
38 administration of public social services. Except for those
39 purposes, no person shall publish, disclose, or use or permit or

1 cause to be published, disclosed, or used any confidential
2 information pertaining to an applicant or recipient.

3 Any county welfare department and the State Department of
4 Social Services shall provide any governmental entity ~~which~~ *that*
5 is authorized by law to conduct an audit or similar activity in
6 connection with the administration of public social services,
7 including any committee or legislative body so authorized, with
8 access to any public social service applications and records
9 described in subdivision (a) to the extent of the authorization.
10 Those committees, legislative bodies and other entities may only
11 request or use these records for the purpose of investigating the
12 administration of public social services, and shall not disclose the
13 identity of any applicant or recipient except in the case of a
14 criminal or civil proceeding conducted in connection with the
15 administration of public social services.

16 However, this section shall not prohibit the furnishing of this
17 information to other public agencies to the extent required for
18 verifying eligibility or for other purposes directly connected with
19 the administration of public social services, or to county
20 superintendents of schools or superintendents of school districts
21 only as necessary for the administration of federally assisted
22 programs providing assistance in cash or in-kind or services
23 directly to individuals on the basis of need. Any person
24 knowingly and intentionally violating this subdivision is guilty of
25 a misdemeanor.

26 Further, in the context of a petition for the appointment of a
27 conservator for a person who is receiving or has received aid
28 from a public agency, as indicated above, or in the context of a
29 criminal prosecution for a violation of Section 368 of the Penal
30 Code both of the following shall apply:

31 (1) An Adult Protective Services employee or Ombudsman
32 may answer truthfully at any proceeding related to the petition or
33 prosecution, when asked if he or she is aware of information that
34 he or she believes is related to the legal mental capacity of that
35 aid recipient or the need for a conservatorship for that aid
36 recipient. If the Adult Protective Services employee or
37 Ombudsman states that he or she is aware of such information,
38 the court may order the Adult Protective Services employee or
39 Ombudsman to testify about his or her observations and to
40 disclose all relevant agency records.

(2) The court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose any relevant agency records if the court has other independent reason to believe that the Adult Protective Services employee or Ombudsman has information that would facilitate the resolution of the matter.

(c) The State Department of Social Services may make rules and regulations governing the custody, use, and preservation of all records, papers, files, and communications pertaining to the administration of the laws relating to public social services under their jurisdiction. The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, ~~which~~ *that* are engaged in planning, providing, or securing social services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided, ~~that the research~~ *making these case records available* will not result in the disclosure of the identity of applicants for or recipients of public social services *and will not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains.*

(d) Any person, including every public officer and employee, who knowingly secures or possesses, other than in the course of official duty, an official list or a list compiled from official sources, published or disclosed in violation of this section, of persons who have applied for or who have been granted any form of public social services for which state or federal funds are made available to the counties is guilty of a misdemeanor.

(e) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office, a criminal act against any county or state welfare worker, or any criminal act witnessed by any county or state welfare worker while involved in the administration of public social services at any location. Further, this section shall

1 not be construed to prohibit an employee of a county welfare
2 department from disclosing confidential information concerning
3 a public social services applicant or recipient to a state or local
4 law enforcement agency investigating or gathering information
5 regarding a criminal act intentionally committed by the applicant
6 or recipient against any off-duty county or state welfare worker
7 in retaliation for an act performed in the course of the welfare
8 worker's duty when the person committing the offense knows or
9 reasonably should know that the victim is a state or county
10 welfare worker. These criminal acts shall include only those
11 ~~which~~ *that* are in violation of state or local law. Disclosure of
12 confidential information pursuant to this subdivision shall be
13 limited to the applicant's or recipient's name, physical
14 description, and address.

15 (f) The provisions of this section shall be operative only to the
16 extent permitted by federal law and shall not apply to, but
17 exclude, Chapter 7 (commencing with Section 14000) of this
18 division, entitled "Basic Health Care", and for which a
19 grant-in-aid is received by the state under Title XIX of the Social
20 Security Act.